



April 23, 2001

Mr. Leonard W. Peck, Jr.  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342

OR2001-1592

Dear Mr. Peck.:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146313.

The Texas Department of Criminal Justice (the "department") received a request for:

- (1) Disciplinary rules and procedures for offenders;
- (2) Administrative Directive 3.21 – Procedures for Drug Testing of Offenders;
- (3) All documents and evidence associated with disciplinary case number 20010136068;
- (4) All documents and evidence associated with disciplinary case number 20010135957;
- (5) The audio tapes of the disciplinary hearings;
- (6) The evidence supporting the drug testing of a named inmate;
- (7) A list indicating the inmates to be tested randomly for drugs during a specified time period;
- (8) A list of other offenders tested for drugs during the same period; and
- (9) A copy of the McConnell Unit's NIDA certification certificate.

You state that you have released information responsive to categories 1, 2, and 9 of the request. However, you seek to withhold the information responsive to categories 3 through 8 under sections 552.101, 552.107, and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.131 of the Government Code relates to information about inmates of the department.<sup>1</sup> Section 552.131 provides in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.131(a). Section 552.029 of the Government Code provides in relevant part:

Notwithstanding . . . Section 552.131, the following information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice is subject to required disclosure under Section 552.021:

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Gov't Code § 552.029(8). The legislature explicitly made section 552.131 subject to section 552.029.

Here, the submitted information clearly relates to an inmate confined in a TDCJ facility. However, we note that the information responsive to category 3 of the request relates to an alleged crime involving an inmate—possession of marijuana. *See* Health & Safety Code § 481.121. Therefore, the department must release basic information contained within the documents responsive to category 3 pursuant to section 552.029 of the Government Code. Basic information that is subject to disclosure under section 552.029(8) includes the time and

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<sup>1</sup>As of the date of this letter ruling, four different sections of the Act were denominated as section 552.131. Sections 552.131 and 552.029, relating to inmates of the department, were added to chapter 552 of the Government Code by the Act of May 26, 1999, 76th Leg., R.S., ch.783, §§ 1, 2, 1999 Tex. Gen. Laws 3407-08.

place of the incident, the names of inmates and of department employees who were involved, a brief narrative of the incident, a brief description of any injuries sustained by anyone involved, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident. You may withhold the remainder of the submitted information under section 552.131 of the Government Code. Based on this finding, we need not reach the remainder of your arguments.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).


If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Nathan E. Bowden".

Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/rr

Ref: ID# 146313

Encl: Submitted documents

cc: Mr. Robert Venhaus  
3407 Craigo Avenue.  
El Paso, Texas 79904-1005  
(w/o enclosures)